

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**AFFYMETRIX, INC., a Delaware  
Corporation,**

**Plaintiff/Counter-Defendant,**

**vs.**

**ILLUMINA, INC., a Delaware Corporation,**

**Defendant/Counter-Plaintiff.**

**Civil Action No. 04-901-JJF**

**ILLUMINA'S SECOND NOTICE OF DEPOSITION  
PURSUANT TO FED. R. CIV. P. 30(b)(6)**

In accordance with the provisions of Rules 26 and 30 of the Federal Rules of Civil Procedure, Illumina, Inc. ("Illumina") hereby provides notice that commencing at 9:00 a.m. on November 4, 2005, at the offices of KIRKLAND & ELLIS LLP, 555 California Street, San Francisco, CA 94104-1501, or at such other time mutually agreed upon by counsel for the parties, it will take the deposition of Affymetrix, Inc. ("Affymetrix") by oral examination of witness(es) designated by Affymetrix to testify on its behalf as the person(s) most competent to testify concerning the matters listed on attached Attachment A. Pursuant to Federal Rule of Civil Procedure 30(b)(6), the person(s) designated by Affymetrix should be prepared to testify as to such matters known or reasonably available to Affymetrix.

Affymetrix is requested to provide Illumina's counsel, on or before October 15, 2005, a written designation of the names and positions of the officers, directors, managing agents or other persons who are most competent to testify concerning the areas of testimony set forth in Attachment A, and, for each person designated, the matters on which he or she will testify.

The depositions will be taken upon oral examination before an official authorized by law to administer oaths and will continue from day to day until completed. Pursuant to Rule 30(b)(2), testimony of the witness(es) will be recorded by both stenographic means and sound-and-visual means.

You are required to produce the witness(es) at the stated time and place, and are invited to attend to cross-examine.

Dated: October 13, 2005

By: /s/ Mary B. Matterer  
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***Counsel for Illumina, Inc.***

## **ATTACHMENT A**

### **DEFINITIONS**

Illumina hereby incorporates by reference the Definitions as set forth in Illumina's First Set of Requests for Production, Illumina's Second Set of Requests for Production.

### **AREAS OF TESTIMONY**

1. For each of the Affymetrix Patents, the identity of each Affymetrix product (past and present) that Affymetrix contends practices, embodies or incorporates the subject matter described and/or claimed in the Affymetrix Patents.

2. For each of the Affymetrix Patents, the design, operation and structure of each Affymetrix product (past and present) that Affymetrix contends practices, embodies or incorporates the subject matter described and/or claimed in the Affymetrix Patents.

3. For each of the Affymetrix Patents, the development and testing of each Affymetrix product (past and present) that Affymetrix contends practices, embodies or incorporates the subject matter described and/or claimed in the Affymetrix Patents.

4. All experiments, research, development and/or testing (past and present) by or on behalf of Affymetrix involving the use of beads, including but not limited to the use of photolithography to synthesize oligonucleotides on beads, the use of encoding systems with beads, and the use of substrates comprising a plurality of beads.

5. The identity of all persons at or associated with Affymetrix (past and present) that have conducted experiments, research, development and/or testing at Affymax or Affymetrix involving beads.

6. Marking of products with the patent numbers of the Affymetrix Patents of each

Affymetrix product that Affymetrix contends practices, embodies or incorporates the subject matter described and/or claimed in the Affymetrix Patents, including but not limited to any marking that Affymetrix contends meets the requirements of 35 U.S.C. § 287.

7. The identity, location, and authenticity of documents and other tangible things constituting evidence relating to the categories set forth in topics 1 through 6 above.

8. The identity and location of witnesses knowledgeable about the categories set forth in topics 1 through 6 above.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of October, 2005, I caused to be electronically filed the foregoing document, **ILLUMINA'S SECOND NOTICE OF DEPOSITION PURSUANT TO FED. R. CIV. P. 30(b)(6)**, with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

Jack B. Blumenfeld, Esq.  
MaryEllen Noreika, Esq.  
Morris Nichols Arsht & Tunnell  
1201 Market Street  
Wilmington, DE 19801

Additionally, I hereby certify that on the 13<sup>th</sup> day of October, 2005, the foregoing document was served via facsimile on the following non-registered participants:

Daniel R. Reed, Esq.  
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